

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE GREENSKY SECURITIES  
LITIGATION,

18 CV 11071 (AKH)

Telephone Conference

New York, N.Y.

May 26, 2020

2:30 p.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

APPEARANCES

COHEN MILSTEIN SELLERS & TOLL PLLC

Attorneys for Plaintiffs

BY: S. DOUGLAS BUNCH

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-and-

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Individual Defendants

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BY: TODD G. COSENZA

SARAH WASTLER

1 MR. TOLL: Good afternoon, your Honor, for the  
2 plaintiffs, Steven Toll and Doug Bunch from Cohen Milstein.

3 THE COURT: Steven Toll and Doug Bunch.

4 MR. SCHWARTZ: Good afternoon, your Honor. Also for  
5 the plaintiff, Max Schwartz and Lauren McCabe from Scott +  
6 Scott.

7 THE COURT: Who will be speaking for the plaintiffs?

8 MR. TOLL: Judge, myself and Doug Bunch, if needed.

9 THE COURT: Just one.

10 Any other plaintiffs?

11 For the defendant. Is Ms. DeMasi here?

12 MS. DeMASI: Yes. Good afternoon.

13 THE COURT: How are you, Ms. DeMasi?

14 MS. DeMASI: I'm fine. How are you, your Honor?

15 THE COURT: Well. Thank you.

16 MS. DeMASI: I am joined this afternoon by my  
17 colleague, Lauren Kennedy, also of Cravath, and I will be  
18 speaking on the conference.

19 THE COURT: Are there other defendants?

20 MR. COSENZA: Yes, your Honor. Todd Cosenza and Sarah  
21 Wastler from Willkie Farr & Gallagher for the underwriter  
22 defendants. I hope your Honor is staying staff and healthy.

23 THE COURT: Thank you.

24 Mr. Cosenza, who is with you?

25 MR. COSENZA: Sarah Wastler from Willkie Farr.

1 THE COURT: Who else?

2 MR. RABIN: Good afternoon, your Honor, this is Shawn  
3 Rabin from Sussman Godfrey. We represent some of the  
4 individual defendants. And on the call with me is my  
5 colleague, Ari Ruben.

6 THE COURT: How are you both?

7 MR. RABIN: Doing well, your Honor. How are you?

8 THE COURT: OK.

9 Anybody else?

10 Since the last time, you were supposed to have been  
11 begun discovery in relationship to the plaintiffs' motion for  
12 class certification.

13 Mr. Toll, where were we with that?

14 MS. WASTLER: Your Honor, Ms. DeMasi and have spoken  
15 yesterday and today and believe we are in a position where the  
16 defendants will not oppose class certification.

17 THE COURT: Ms. DeMasi, shall I sign the plaintiffs'  
18 order?

19 MS. DeMASI: Your Honor, I believe the way that the  
20 case law contemplates a situation where defendants do not  
21 oppose class certification is that the parties would agree on  
22 proposed findings so that the Court can make findings under  
23 Rule 23. It would indicate that defendants do not oppose, and  
24 we would submit that to your Honor, and we are happy to do that  
25 on whatever time frame pleases your Honor.

1 THE COURT: What's convenient to you?

2 MS. DeMASI: Mr. Toll, I'll turn it over to you, as I  
3 imagine you may draft the findings.

4 MR. TOLL: I would say by the end of the week, Judge,  
5 is probably workable.

6 THE COURT: Why don't you do it on June 1 at noon.

7 MR. TOLL: We will do that. Thank you, Judge.

8 THE COURT: You'll submit a consent order providing  
9 the class certification by June 1.

10 Let me ask you about some of the provisions. Is it  
11 contemplated that you will be actually distributing a class  
12 notice?

13 MR. TOLL: I would think so, your Honor.

14 THE COURT: The answer is no. What's the point of  
15 certifying a class without notice?

16 MR. TOLL: No. I'm sorry. I said I would think so,  
17 meaning yes. Sorry.

18 THE COURT: Tell me what's contemplated.

19 MR. TOLL: We have not discussed the timing of that  
20 with defense counsel. But, you know, I would suspect we would  
21 just draft up a notice and send it to them to look at to see if  
22 we could agree and submit it for your Honor's consideration.

23 THE COURT: And when would you propose to actually  
24 give that notice?

25 MR. TOLL: I would say in the next few weeks, two to

1 three weeks, your Honor, sounds reasonable.

2 THE COURT: Yes. So we are talking about actually  
3 distributing your notice in June. I ask that because in  
4 previous class actions I found after I granted the class motion  
5 and I certified a class that the actual notice for the class  
6 did not come about until sometimes years later in connection  
7 with a settlement. If we're certifying a class now, I think we  
8 should actually distribute the class and allow opt-outs to  
9 register.

10 MR. TOLL: I absolutely agree, your Honor.

11 THE COURT: You will provide dates in your proposed  
12 order that will work out a provision for settling a class  
13 notice by a certain date and providing for the -- what comes  
14 after that, an opt-out period? And then what do I do? Do I  
15 just tuck it away, or is there a hearing involved afterwards,  
16 or what?

17 MR. TOLL: No, your Honor. I think you could just  
18 wait, just sit on the sideline, as the case goes forward.

19 THE COURT: We will just have the certification. You  
20 will report to me. You will build in a reporting date and tell  
21 me about any opt-outs and the like.

22 What kind of notice will you be giving? How many  
23 shareholders do we have, approximately?

24 MR. TOLL: I don't know the answer to that. I don't  
25 know if defense counsel has a better feel for that, you know,

1 because so much of the securities is generally held in a  
2 discreet name --

3 THE COURT: Ms. DeMasi might know.

4 MS. DeMASI: Your Honor, I don't have that information  
5 as I'm here. I'm happy to inquire and confer with Mr. Toll,  
6 but unfortunately I don't have an accurate number to give your  
7 Honor on this call.

8 THE COURT: What would be the best method possible to  
9 give actual notice?

10 MR. TOLL: I would say, you know, by mail. Again,  
11 usually, the defendants will provide to us the list of holders  
12 that they have, and then usually we would send out notices to  
13 brokerage houses to ask them for the names of individuals.

14 Actually, I'll amend slightly what I said before. We  
15 can certainly provide the notice documentation to the Court in  
16 a few weeks, but it probably would not go out over the next  
17 couple of months because we would have to first get your  
18 Honor's approval to the notice and then send it out to the  
19 names and addresses the defendants provide us of holders, and  
20 then send it out also to brokerage firms, and they usually take  
21 a month or so or more, who knows --

22 THE COURT: Build in five days for my review and  
23 comment, and then we will work out a schedule towards the end.

24 Will we have some kind of a web page?

25 MR. TOLL: We can do that, your Honor. I am not sure

1 on an initial notice it's something that's necessary, but we  
2 could, if your Honor wishes us to.

3 THE COURT: I'm in favor of it. So anybody in the  
4 class who wishes to keep abreast of what's happening in the  
5 litigation would be able to know that, particularly would be  
6 able to know what happens when we meet and you give reports.  
7 Yes, I think there should be some kind of web page.

8 Ms. DeMasi, what does the notice that is given in your  
9 10-K indicates about this lawsuit?

10 MS. DeMASI: There is a litigation disclosure, your  
11 Honor, that is, it discloses the fact that the lawsuit and the  
12 pending state court case, which I'm happy to address --

13 THE COURT: You don't need to address that. I just  
14 wanted to know what the thing was.

15 MS. DeMASI: A disclosure of the litigation and the  
16 fact of the litigation.

17 THE COURT: I think what you also ought to have is a  
18 sentence that will refer any interested party to the web page  
19 that the plaintiff poses. If you want to be participating in  
20 that web page, that would also be fine. It would also be a  
21 good idea that you both have joint involvement in the web page,  
22 and that goes for the other defendants as well.

23 MS. DeMASI: Understood, your Honor.

24 THE COURT: Would you build that in as well.

25 MS. DeMASI: I will certainly raise that with our

1 client and, yes, if your Honor is asking for that, we will  
2 build that in. I'm happy to cooperate with Mr. Toll and get  
3 whatever information we need to with respect to class notice.

4 THE COURT: Excellent. So much for the notice.

5 Where do you stand on discovery? Is there going to be  
6 any class discovery? I guess not.

7 MR. TOLL: No, your Honor. We have discussed, Ms.  
8 DeMasi and I, a schedule, and we are pretty close to agreement  
9 on something to submit to the Court of what we envision as a  
10 reasonable schedule for merits discovery and substantive motion  
11 practice for your consideration.

12 THE COURT: The next step would be production of  
13 documents, interrogatories, and the like, the written  
14 discovery.

15 How long a period do you envision for that, Mr. Toll?

16 MR. TOLL: Well, what we have tentatively agreed  
17 upon -- just so your Honor knows, we have been in discussion  
18 over the last four months, since we last met with them. Much  
19 of it has been on class certification issues and plaintiffs'  
20 discovery.

21 But we have also started discussing in depth the  
22 defendant's discovery. And as your Honor may know, we served  
23 our document requests right after the last conference. But the  
24 defendants are expecting that they believe they can produce a  
25 substantially complete document production by the end of



1 August, so that is what we will be waiting on. It would  
2 hopefully come in a rolling production, and I don't know when  
3 Ms. DeMasi could say when they might start, but she believes  
4 they can complete it by the end of August.

5 THE COURT: So I would like to meet with you after the  
6 written discovery and before the depositions. I don't think  
7 you need to concern yourself now with identifying which  
8 depositions you would take, but I would like you to have that  
9 in mind when we next meet.

10 If I schedule our next meeting for September, Ms.  
11 DeMasi, would that be too quick?

12 MS. DeMASI: No. I think that would be appropriate,  
13 your Honor.

14 THE COURT: How about if we do it on the 16th at 2:30,  
15 September 16 at 2:30.

16 MS. DeMASI: That would be just fine.

17 MR. TOLL: Fine with us, your Honor.

18 THE COURT: Say again, Mr. Toll.

19 MR. TOLL: I'm saying that's fine with us as well,  
20 your Honor.

21 THE COURT: I'm assuming, by fixing this date, that by  
22 August 31, all discovery will be completed, not counting  
23 depositions, but all of the production of documents or  
24 interrogatory answers and the like.

25 Is that too ambitious? We can enlarge the schedule.

1 What do you think, Mr. Toll?

2 MR. TOLL: No. I think that is workable, your Honor.

3 THE COURT: Ms. DeMasi.

4 MS. DeMASI: Your Honor, I agree certainly with  
5 respect to the document production and some written  
6 interrogatories, for instance. I would say that I think the  
7 parties contemplate that discovery such as RFAs, requests for  
8 admissions, or contention interrogatories might be more  
9 efficient closer to the end of fact discovery, after some  
10 depositions have been taken. So that's the exception with  
11 respect to that.

12 THE COURT: I agree with you. I find that it's a  
13 useless exercise too early in the case.

14 My philosophy is this. You need a document  
15 production. You are going to have to agree on various search  
16 terms. The interrogatories are relatively useless, except  
17 ancillary to the document production. They shouldn't be asking  
18 for admissions or contentions or anything like that. They  
19 should be focused precisely on aiding discovery, identifying  
20 witnesses, helping to produce documents, and the like.

21 I'd like to assume that by August 31, all of this work  
22 will be finished, the document production will be complete, and  
23 you will be ready for the next stage, which will be the  
24 depositions.

25 And my purpose in having the meeting on September 16

1 is that we will settle at that time who will take depositions,  
2 how many depositions there will be and the like, and set a  
3 closure date for the taking of depositions.

4 MR. TOLL: Judge, just so you know, Ms. DeMasi and I  
5 have discussed that. And subject to any changes, we were  
6 focusing on maybe a deadline for completing depositions, other  
7 than experts, by November 30. So that was our tentative  
8 thought, is document production by the end of August and then  
9 September, October, November for fact depositions is what we  
10 were generally thinking.

11 THE COURT: Any date you give now is more a hope than  
12 a realistic plan. Focus on getting your discovery finished by  
13 August 31, and we will discuss a deposition plan and how long  
14 it should take on September 16.

15 MR. TOLL: Very good.

16 MS. DeMASI: Yes, your Honor.

17 THE COURT: Mr. Cosenza.

18 MR. COSENZA: That's fine, your Honor. We are  
19 amenable to that, and we will work with complying with the  
20 August 31 date.

21 THE COURT: Mr. Rabin.

22 MR. RABIN: I think that all makes sense, your Honor.  
23 Thank you very much.

24 THE COURT: It's all agreed.

25 What else can I do for you today?

1 MR. TOLL: Your Honor, I think we have covered it for  
2 today. Thank you.

3 THE COURT: If there are no questions, we can close  
4 this meeting, and I'll look forward to seeing you on September  
5 16 at 2:30.

6 What do you think of this format? Have you used it  
7 with other judges?

8 MR. TOLL: Your Honor, we just started to do both  
9 telephone and video conferences and motion hearings and  
10 arguments, and still all a learning experience, but I think it  
11 works.

12 THE COURT: Ms. DeMasi?

13 MS. DeMASI: I agree. I've had telephonic conferences  
14 now and then over time and, obviously, more, in the recent last  
15 couple of months, and I think it works well, and the court  
16 staff are incredibly helpful in making the logistics run  
17 smoothly, so we are very grateful for that.

18 THE COURT: I will not look forward to this format for  
19 an actual replacement for face-to-face meetings when times get  
20 better, right?

21 MR. COSENZA: I agree with that, your Honor. Face to  
22 face is much better, but we are doing the best we can do under  
23 the current circumstances.

24 THE COURT: Stay well, everyone.

25 (Adjourned)